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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:)	DOCKET NO. SDWA-10-2001-0182
)	
CUMMINS NORTHWEST, INC.,)	COMPLAINT FOR CIVIL PENALTIES
)	AND ADMINISTRATIVE ORDER
)	
Respondent.)	
_____)	

I. JURISDICTION

This Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 10, who in turn has redelegated them to the Director, Office of Water. Pursuant to Section 1423(c) of the SDWA, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, 64 Fed. Reg. 40176-40190 (July 23, 1999) ("CROP rules"), Complainant hereby proposes the assessment of civil penalties against Cummins Northwest, Inc. for the violation of the requirements of an applicable

1 underground injection control program approved pursuant to
2 Section 1422 of the SDWA, 42 U.S.C. § 300h-1. Pursuant to
3 Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2, Complainant
4 also proposes issuance of the administrative order contained in
5 Part VII of this document.

6 **II. GENERAL ALLEGATIONS**

7 1. Cummins Northwest, Inc., hereinafter "Respondent," is a
8 corporation duly organized under the laws of the State of
9 Oregon.

10 2. Respondent is a "person" within the meaning of Section
11 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

12 3. Respondent owns and operates a motor vehicle repair
13 service facility located at 3500 North Highway 97, Bend, Oregon
14 ("Facility").

15 **III. AUTHORITIES AND ALLEGATIONS**

16 4. On August 23, 2000, EPA conducted an Underground
17 Injection Control ("UIC") inspection of Respondent's Facility.

18 5. At the time of the August 23, 2000, UIC inspection, the
19 Facility repaired motor vehicles.

20 6. The Facility discharged petroleum waste fluids into
21 waste disposal wells for surface drainage.

22 7. The Facility did not have an available means to
23 temporarily plug or block the waste disposal wells for surface
24 drainage in the event of an accident or spill.

25 8. Pursuant to Section 1422 of the SDWA, 42 U.S.C. § 300h-
26 1, and 40 C.F.R. Part 147, Subpart MM, Oregon Department of
27 Environmental Quality ("ODEQ") administers an EPA-approved UIC
28

1 program for all classes of wells in Oregon, except those on
2 Indian lands. EPA approved ODEQ's UIC program on September 25,
3 1984, effective October 9, 1984.

4 9. Pursuant to 40 C.F.R. § 147.1900(a)(2), requirements set
5 forth in Oregon Administrative Rules ("O.A.R.") § 340-044-0050
6 have been incorporated by reference and made a part of the
7 applicable UIC program for Oregon. O.A.R. § 340-044-0050(5)
8 provides that, "Using a waste disposal well for surface drainage
9 in areas where toxic chemicals or petroleum waste fluids are
10 stored or handled is prohibited, unless there is containment
11 around the product area which will prevent spillage or leakage
12 from entering the well." O.A.R. § 340-044-0050(6) provides
13 that, "Any owner or operator of a waste disposal well for storm
14 drainage shall have available a means of temporarily plugging or
15 blocking the well in the event of an accident or spill."

16 10. On March 5, 2000, and July 19, 2001, EPA notified the
17 State of Oregon and Respondent of EPA's determination that
18 Respondent was in violation of requirements of ODEQ's UIC
19 program. More than thirty days have elapsed since EPA issued
20 these notifications, and Oregon has not commenced enforcement
21 action against Respondent.

22 **Count I**

23 11. At the time of the August 23, 2000, UIC inspection, EPA
24 observed one waste disposal well for surface drainage being used
25 for petroleum waste fluid disposal, in violation of O.A.R. §
26 340-044-0050(5).

12. Subsequent to the August 23, 2000, UIC inspection, EPA received additional information showing Respondent operated at the Facility a total of three waste disposal wells for surface drainage to dispose of petroleum waste fluids. The depth of each waste disposal well is greater than its largest surface dimension.

13. Respondent has used the waste disposal wells for petroleum waste fluid disposal each day for at least five years preceding the issuance of this Complaint.

Count II

14. Complainant realleges and incorporates by reference
Paragraphs 1 through 13.

15. The facility did not have any means to temporarily plug or block five waste disposal wells for storm drainage, in violation of O.A.R. § 340-044-0050(6).

V. PROPOSED PENALTY

16. Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties not to exceed \$11,000 for each day of violation for any past or current violation, up to a maximum of \$137,500.

17. Based on the foregoing authority and allegations, Complainant hereby proposes issuance of a final order assessing administrative penalties against Respondent, for the SDWA violations cited above, in the amount of THIRTEEN THOUSAND DOLLARS (\$13,000).

1 18. The proposed penalty amount was determined by
2 Complainant after taking into account appropriate factors
3 including: the seriousness of the violations; the economic
4 benefit resulting from the violations; and Respondent's history
5 of violations, ability to pay, and good faith efforts to comply.

6 19. The violations described above are serious.
7 Respondent's violations have resulted in the injection of
8 significant quantities of petroleum waste fluids above and into
9 underground sources of drinking water. Petroleum waste fluids,
10 such as motor oils, contaminated diesel fuels, and chlorinated
11 and non-chlorinated parts cleaners, contain a number of toxic
12 chemicals and heavy metals, which can threaten public health.
13 Such petroleum waste fluids have short-term health effects,
14 including central nervous system damage and kidney failure
15 which, if left untreated, may be fatal. Long-term exposure to
16 petroleum waste fluids can cause kidney, liver, and skin cancer.

17
18 20. Respondent realized an economic benefit by having
19 avoided and/or delayed implementation of waste management
20 controls that would have ensured compliance with the applicable
21 requirements. Based on the information available to EPA
22 regarding Respondent's financial condition, Respondent appears
23 able to pay the proposed penalty.

24 **VII. PROPOSED ADMINISTRATIVE ORDER**

25 21. Based upon the foregoing findings and pursuant to
26 Section

1 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), Complainant proposes
2 to issue the following Administrative Order. Respondent shall
3 cease all unauthorized underground injection activities. In
4 particular, Respondent shall comply with the prohibition on
5 using waste disposal wells found in O.A.R. § 340-044-0050(5).
6 Within seven (7) days of the effective date of this order,
7 Respondent shall provide EPA with documentation confirming that
8 all waste disposal wells have been disconnected or rerouted.
9 Such documentation shall include a photographic or video record
10 of the improvements made to the facility to achieve compliance
11 with the SDWA, plus an estimate (with any supporting
12 documentation) of the costs expended to achieve compliance.
13 Respondent shall submit all such documentation to:

14 Calvin Terada
15 Groundwater Protection Unit
16 U.S. Environmental Protection Agency, Region 10
17 1200 Sixth Avenue, Mail Stop OW-137
Seattle, Washington 98101
Phone: (206) 553-4141

18 Within thirty (30) days of the effective date of this order,
19 Respondent shall initiate a site investigation or, if necessary,
20 a cleanup in a manner that is consistent with ODEQ's Independent
21 Cleanup Pathway, formalized in April 1999. Upon completion of
22 the site investigation and any necessary cleanup, Respondent
23 shall submit to EPA for review and approval the final report, in
24 a form consistent with ODEQ's "Independent Cleanup Pathway
25 Report Preparation Guide," dated March 26, 2001. Respondent may
26 request an extension of an additional (30) days in which to
27 submit to EPA the final report, which extension will not be

1 unreasonably withheld by EPA. Fifteen (15) days upon receiving
2 EPA approval for the final report, Respondent shall properly
3 plug and abandon the waste disposal wells in a manner which is
4 consistent with

5 O.A.R. § 340-044-0040 and O.A.R. § 690-240-030.

6 22. In accordance with Section 1423(c)(3)(A) of the SDWA,
7 42 U.S.C. § 300h-2(c)(3)(A), this order will be issued thirty
8 (30) days after Respondent receives this written notice unless
9 Respondent requests an administrative hearing on the order as
10 described below.

11 23. In accordance with Section 1423(c)(3)(D) of the SDWA,
12 42 U.S.C. § 300h-2(c)(3)(D), this order shall become effective
13 thirty (30) days following its issuance unless an appeal is
14 taken pursuant to Section 1423(6) of the SDWA, 42 U.S.C. § 300h-
15 2(6).

16 **VII. OPPORTUNITY TO REQUEST A HEARING**

17 24. Respondent has the right to request a hearing on any
18 material fact alleged in this Complaint or on the
19 appropriateness of the penalty and order proposed herein. Upon
20 request, the Presiding Officer will hold a hearing for the
21 assessment of these civil penalties and issuance of this order,
22 conducted in accordance with Subpart I of the CROP rules. A
23 copy of the CROP rules accompanies this Complaint.

24 25. Respondent's Answer to this Complaint, including any
25 request for hearing, must be in writing and must be filed with:
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27
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1 Regional Hearing Clerk
2 U.S. Environmental Protection Agency, Region 10
3 1200 Sixth Avenue, Mail Stop ORC-158
4 Seattle, Washington 98101

5 **IX. FAILURE TO FILE AN ANSWER**

6 26. To avoid a Default Order being entered pursuant to
7 Section 22.17 of the CROP rules, Respondent must file a written
8 Answer to this Complaint with the Regional Hearing Clerk within
9 thirty (30) days after service of this Complaint.

10 27. In accordance with Section 22.15 of the CROP rules,
11 Respondent's Answer should clearly and directly admit, deny, or
12 explain each of the factual allegations contained in this
13 Complaint with regard to which Respondent have any knowledge.
14 Respondent's Answer must also state: (1) the circumstances or
15 arguments which are alleged to constitute the grounds of
16 defense; (2) the facts which Respondent disputes; (3) the basis
17 for opposing the proposed penalty and order; and (4) whether a
18 hearing is requested. Failure to admit, deny, or explain any
19 material factual allegation contained herein constitutes an
20 admission of the allegation.

21 **X. NOTICE OF APPLICATION OF SUBPART I**

22 28. The procedures of Subpart I of the CROP rules will
23 govern this adjudicatory proceeding, 40 C.F.R. §§ 22.50-52.

24 **XII. QUICK RESOLUTION AND SETTLEMENT**

25 29. In accordance with Section 22.18 of the CROP rules,
26 Respondent may resolve this action at any time after ten (10)
27 days
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1 following the close of public comment on this Complaint by
2 mailing the proposed penalty in full to:

3 EPA Region 10 Hearing Clerk
4 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

5 and by filing with the Regional Hearing Clerk a copy of the
6 check.

7 30. EPA encourages settlement of a proceeding at any time
8 if the settlement is consistent with the provisions and
9 objectives of the Act and applicable regulations. Whether or
10 not Respondent requests a hearing, Respondent may request an
11 informal settlement conference to discuss the facts of this
12 case, the proposed penalty, and the possibility of settling this
13 matter. To request such a settlement conference, please
14 contact:

15
16 Joseph W. Ryan
17 Assistant Regional Counsel
18 U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
19 Seattle, Washington 98101
(206) 553-1506

20 31. A request for an informal settlement conference does
21 not extend the thirty (30) day period for filing a written
22 Answer to this Complaint.

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Dated this 4 day of September, 2001

_____/s/_____
Randall F. Smith, Director
Office of Water

CERTIFICATE OF SERVICE

I certify that the foregoing "Administrative Complaint For Penalties" was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy, together with a cover letter and copy of the CROP rules, by certified mail, return receipt requested:

Dated: September 6, 2001

_____/s/_____
Greg Sippy
U.S. EPA Region 10